IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 113 OF 2004

IN

SUMMARY SUIT NO.3429 OF 2003

Hemant K. Nanavati .. Plaintiff

versus

Indico Construction Co. & Ors. .. Defendants

...

Mr.R.V. Govilkar i/b B.M. Bhatt for the plaintiff.

Mr.S.S. Joshi for the defendant nos.1 and 2.

CORAM : D.G. KARNIK,J.

DATED : 15th March 2005.

P.C.:

1. Heard the learned counsel for the plaintiff.

2. The plaintiff has filed this suit for recovery of the amount due under a cheque issued by the

defendant nos.1 and 2 in the sum of Rs.8,00,000/- and interest thereon. The defendant no.3 has died during the pendency of the suit and hence, Summons for Judgement is pressed only against defendant nos.1 and 2. The defendant no.2 was a partner of defendant no.1 and after the death of defendant no.3 has become its proprietor.

3. The facts leading to the dispute between the parties are stated below:-

4. The plaintiff's mother, who has since died, had agreed to purchase a flat bearing flat no.610 admeasuring 581 sq.ft on the 6th floor of the building known as Devadiga Co-op Housing Soc. Ltd. The defendants were carrying out the construction of the said building. The Society issued a letter of allotment as well as the share certificate to the plaintiff/her mother. However, possession of the flat was not given to the plaintiff's mother. It is the case of the defendant that they have terminated the agreement with the plaintiff's mother and with the consent of the Society the flat has been re-sold to a third person. After the death of the plaintiff's mother, the plaintiff had been

approaching the Society and the defendants for allotment and possession of the flat. It is alleged by the plaintiff that there were meetings between the plaintiff and defendant no.2 who stated that the said flat was re-sold to a third party under a mistaken belief and that he would take possession of the said flat from the third person and give it to the plaintiff. However, as the defendant no.2 did not fulfil his promise, the plaintiff wrote a letter to the Dy. Commissioner of Police as well as to the Commissioner of Police for registering an offence against the defendants. The defendants were called for investigation at the Andheri Police station where the defendant no.2 promised that he would find and give to the plaintiff some other flat in the locality within a period of 18 months failing which he would pay to the plaintiff a sum of Rs.8 lakhs.

5. The defendants filed a reply contesting the claim of the plaintiff. It is not disputed by the defendant that he was carrying out the construction of the building. It is however his case that the agreement with the plantiff’s mother was terminated by the defendants for non payment of his dues and thereafter the Society sold the flat to a third

person who paid the dues of the defendants. The defendants have not denied that liable to hand over the possession of the flat to the plaintiff. The defendant did not deny that complaints were made by the plaintiff to the Dy. Commissioner of Police and Commissioner of Police. On the other hand, it is their case that on account of the said complaints, he was called at the Andheri Police station, where he was required to issue the post dated cheque of Rs.8 lakhs to the plaintiff by force and coercion.

6. It is thus clear that the defendants do not deny the issuance of the cheque. According to the plaintiff, the consideration for the cheque was the booking of the flat made by the plaintiff's late mother and the failure of the defendants to hand over the flat in pursuance of the said agreement, the cheque was issued in lieu of the defendants inability to hand over the possession of the flat. There is a presumption of consideration u/s.118 of the Negotiable Instruments Act. Therefore, the only point that needs to be considered is whether the defence of coercion raised by the defendants is genuine and bonafide or sham and without substance.

7. Pleadings of coercion are to be found in paragraph no.7 of the affidavit in reply wherein the defendant no.2 states:

> "I say that Plaintiff in order to recover the earnest money paid by his mother coerced and threatened me in Andheri Police station on 31st March 1999 at around 1.30 p.m. in presence of the Asstt. Sub-Inspector of Police Mr.R.B. Mohite and obtain writing dated 31st March 1999 along with it post-dated cheque bearing No.181814 dated 2nd October 2000 drawn on New India Co-operative Bank Ltd.

In my view, these pleadings are insufficient even to make out a ground of coercion. Coercion is defined under section 15 of the Indian Contract Act as follows:-

> "Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

There is not even an averment in the affidavit in reply that the plaintiff committed or threatened to commit any act forbidden by the Indian Penal Code or unlawfully detained or threatened to detain any

property to the prejudice of the defendants or any other person with an intention of causing them to enter into an agreement or issuance of a cheque. The defendant have not alleged any act on the part of the plaintiff which amounts to a coercion. No details are pleaded as to what were the threats given by the plaintiffs. Further, it is worthwhile to note that coercion and threatening is alleged to have been committed in the presence of Asstt. Sub Inspector of Police, R.B. Mohite in the police station. There is no allegation of any collusion between the plaintiff and the police officers. Therefore, there is not even a proper averment of coercion in law so as to entitle the Court to raise an issue whether the cheque was issued out of coercion and threats.

8. In the circumstances, the defendants can only be granted conditional leave to defend the suit subject to their depositing in the Court the principal sum of the cheque. Accordingly, the defendants are granted conditional leave to defend the suit subject to their depositing in the Court a sum of Rs.8 lakhs within a period of eight weeks. On such deposit, the amount shall be invested in

any Nationalised bank of the choice of the defendants if such choice is indicated at the time of deposit or else in the Bank of India, Fort Branch initially for a period of 13 months to be renewed from time to time till the disposal of the suit.

9. On deposit of the money, suit shall stand transferred to the list of commercial causes. The defendants shall file written statement within a period of one month.

10. Certified copy is expedited.